



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Coating Measurement Instruments

File: B-256259

Date: March 3, 1994

Chris Horvath for the protester.
Paul Brundage, Esq., National Aeronautics and Space Administration, for the agency.
Tania L. Calhoun, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where Commerce Business Daily notice announcing agency's intent to make a sole-source award gives other potential sources an opportunity to express their interest and capability to perform, and agency rejected the protester's expression of interest, protest filed at the General Accounting Office more than 10 days after protester received notice of rejection is untimely.

DECISION

Coating Measurement Instruments (CMI) protests the award of a sole-source contract to Veeco Instruments, Inc. by the National Aeronautics and Space Administration (NASA), Goddard Space Flight Center, for an X-Ray Fluorescence Spectrometer. CMI objects to the decision to procure on a sole-source basis because it claims it is capable of meeting NASA's requirements.

We dismiss the protest.

A synopsis of the proposed sole-source to Veeco was published in the August 13, 1993, Commerce Business Daily (CBD). The notice advised that NASA intended to procure an X-Ray Fluorescence Spectrometer, along with associated hardware and software, and listed a number of features that the equipment was required to possess. While identifying Veeco as the only known source for the equipment, the CBD notice invited other firms to express any interests and explain their capabilities within 15 days of the synopsis date.

By letter dated August 30, CMI apparently indicated to NASA that its system would satisfy the agency's requirements. In response, the agency sought more information from CMI, and CMI provided the agency with descriptive literature concerning its product. In a letter dated November 2, NASA informed CMI of its determination that its product was technically unacceptable, and that the agency would continue to procure the equipment as planned. In a November 9 letter, CMI expressed concern regarding NASA's determination and made additional assertions regarding its product in order to clarify its capabilities. In a letter dated December 13, after again evaluating CMI's product, NASA informed CMI that its technical evaluation decision remained unchanged, and that it would continue with the procurement as planned. NASA awarded the contract to Veeco on December 30, and CMI filed this protest on January 24, 1994.

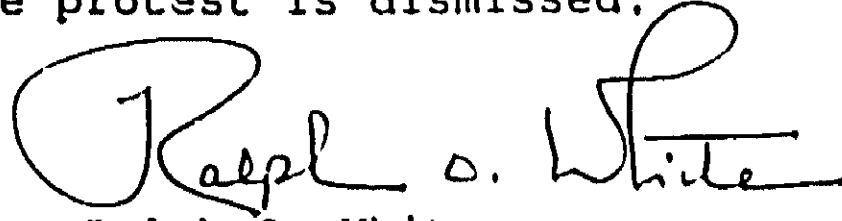
Protesters must submit a timely expression of interest responding to a CBD notice and receive a negative agency response as a prerequisite to filing a protest challenging an agency's sole-source decision. This procedure gives the agency an opportunity to reconsider its sole-source decision in light of a serious offeror's preliminary proposal, while limiting challenges to the agency's sole-source decision to diligent potential offerors. DCC Computers, Inc., 70 Comp. Gen. 534 (1991), 91-1 CPD ¶ 514; Amray, Inc., B-248109, Apr. 13, 1992, 92-1 CPD ¶ 361. Where the agency rejects the protester and proceeds with its sole-source approach, the protester then must file its protest within 10 days after it knows or should have known of the rejection. Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490; 4 C.F.R. § 21.2(a) (1993).

Here, CMI was on notice of the agency's December 13 rejection of its product as technically unacceptable no later than December 16, the day the firm replied to that letter of rejection.¹ As CMI's protest to this Office was not filed until January 24, 1994, more than one month later, the protest is untimely and we will not consider it. Id., see Rexnord Corp., B-248553.2, July 6, 1992, 92-2 CPD ¶ 7. CMI's continued pursuit of the matter with NASA did not

¹By letter dated December 16, CMI acknowledged receipt of NASA's December 13 letter and disagreed with several of the agency's conclusions. In our view, this exchange did not continue the agency-level protest process because the letter concluded with the statement that CMI would pursue its protest with our Office.

extend its time for filing a protest in our Office. See
Robert B. Hammett--Recon., B-253720.2; B-253721.2, Aug. 3,
1993, 93-2 CPD ¶ 76.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ralph O. White". The signature is written in dark ink and is positioned above the printed name and title.

Ralph O. White
Acting Assistant General Counsel